

# Chapter 1

## Who Must File

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This chapter identifies persons that are required to disclose lobbying activity. This chapter begins with a review of important definitions that are used to determine whether a person must file lobbying reports. The qualifications that must be met for each type of lobbying filer are provided along with “user friendly” examples. Because not every person that communicates with state officials must file, common exceptions are also provided.

### General Definitions

The following definitions describe what is commonly referred to as “lobbying” and provide guidance later in this chapter when the terms “lobbyist,” “lobbying firm,” “lobbyist employer/coalition,” and “\$5,000 filer” are discussed. (See Appendix 1 for other definitions.)

### Direct Communication

An individual engages in “direct communication” when he or she appears as a witness before, talks to (either by telephone or in person), corresponds with, or answers questions or inquiries from, any qualifying official, either personally or through an agent who acts under the individual’s direct supervision, control, or direction.

“Direct communication” does not include any request for or provision of purely technical data or analyses to an administrative agency by a person who does not otherwise engage in direct communication for the purpose of influencing legislative or administrative action.

Additionally, an individual does not engage in “direct communication” when he or she meets or speaks with a qualifying official in the company of a registered lobbyist retained

by the individual, the individual’s employer, or by a bona fide trade association or membership organization of which the individual or individual’s employer is a member.

### Administrative Testimony

“Administrative testimony” means influencing or attempting to influence administrative action by acting as counsel in, appearing as a witness in, or providing written submissions, including answers to inquiries, which become part of the record of:


- Any regulatory or administrative agency proceeding that is conducted as an open public hearing for which public notice is given, of which a record is created in a manner that makes possible the creation of a transcript, and with respect to which full public access is provided to such record or transcript and to all written material that is submitted to become part of the record.
- Certain proceedings of the California Public Utilities Commission. (See Appendix 1.)


An individual does not count compensation for or time spent preparing and presenting administrative testimony in applying the time or compensation tests for qualifying as a lobbyist.

### Influencing Legislative or Administrative Action

“Influencing legislative or administrative action” means communicating directly or taking any other action for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative

action. “Legislative action” means the drafting, introduction, consideration, modification, enactment, or defeat of any bill, amendment, report, nomination, or other matter by the Legislature. “Legislative action” also means the action of the Governor in approving or vetoing any bill. “Administrative action” means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule or regulation. It also includes actions in certain ratemaking proceedings and quasi-legislative proceedings.

 **Quick TIP** If you are trying to obtain a permit, license, grant, or contract at a state agency, you are not trying to influence legislative or administrative action and your time and contacts are not counted as lobbying.

 **Quick TIP** Although only direct communication is counted for purposes of qualifying as a lobbyist or lobbying firm, once an individual or entity qualifies as a lobbyist or lobbying firm, other types of lobbying expenses, such as payments for administrative testimony, are reportable. This is further discussed in Chapter 5.

### Questions and Answers

- Q. *I work for a public relations firm. On behalf of a client, I attend meetings and participate in discussions with legislators about the client’s positions on legislative issues and am accompanied by the client’s contract lobbyist. Must I count the time at these meetings toward qualifying as a lobbyist?*
- A. Yes. You are engaging in “direct communication.” Although you are accompanied by the client’s lobbyist, the exception for engaging in direct communication in the presence of a lobbyist only applies to the client, employees of the client, or, when the client is an association, members of the association.

- Q. *The Department of Housing and Community Development has just requested proposals from building contractors to provide a number of low- and moderate-income housing units throughout the state. We would like to bid on the contract. Since we are trying to influence the decisions of an administrative agency, are we engaged in lobbying?*
- A. No. While the Department is an administrative agency, awarding a contract is not considered administrative action. Therefore, bidding on the contract is not lobbying.
- Q. *We are supporting an Indian gaming compact. To do so, we will contact the Governor’s office and discuss why we think the Governor should sign the compact. Is this lobbying?*
- A. Yes. The Commission has determined that Indian gaming compacts are administrative actions, and the Governor’s office is an administrative agency for this purpose. Therefore, attempting to influence the Governor concerning these compacts qualifies as lobbying.

### Lobbyists

A lobbyist is an individual who:

**is compensated** (other than reimbursement for reasonable travel expenses) **for directly communicating with a qualifying official** (other than administrative testimony) **when trying to influence legislative or administrative action** (such as bills and regulations).

Not everyone who is paid to lobby will qualify as a lobbyist. There are two tests to make this determination: a **time test** for “in-house lobbyists” and a **compensation test** for “contract lobbyists.”

Generally, a lobbyist is categorized as either an “in-house lobbyist” or a “contract lobbyist.”

**In-House Lobbyists** – These individuals lobby on behalf of their employer *only*; they are compensated for their time; and they spend at least one-third of that time in a calendar month in **direct communication** with qualifying officials.

**Contract Lobbyists** – These individuals lobby for someone other than their employer and receive or are entitled to receive \$2,000 in a calendar month for **direct communication** with qualifying officials.

**Examples** *Gail Perrywinkle is a partner with the CJW Law Firm. Gail lobbies bills on behalf of several clients. She frequently engages in direct communication with various legislators and their staff. During January, she receives a draw of \$4,200, \$2,000 of which is attributable to direct communication. Gail qualifies as a contract lobbyist under the “compensation test” and must prepare a lobbyist certification and file quarterly reports. In addition, CJW must register and file quarterly reports as a lobbying firm. Any client that authorizes the CJW Law Firm to lobby must also sign authorization forms and file quarterly reports as lobbyist employers, regardless of the amount they pay.*

*During the month of February, Joey Nelson, an independent contractor, receives \$1,500 from the Spanky Corporation and \$700 from the Association of Statistical Engineers to lobby on their behalf. Joey qualifies as a contract lobbyist. The compensation test does not require receipt of \$2,000 from a single client. Joey must prepare a lobbyist certification and file quarterly reports. As an independent contractor, his business must also file as a lobbying firm. Spanky and ASE must also sign authorization forms and file quarterly reports as lobbyist employers.*

*Maya Brittle town is the Legislative Affairs Coordinator of the EAB Corporation. During*

*May, Maya spends one-third of her compensated time testifying at legislative hearings, and speaking on the telephone with legislative and agency officials concerning several legislative bills and state agency regulations. Maya qualifies as an in-house lobbyist and must prepare a lobbyist certification and file quarterly reports. In addition, EAB Corporation must register and file quarterly reports as a lobbyist employer.*

### Who is Not a Lobbyist?

- An individual who lobbies on a voluntary (unpaid) basis.
- An individual who only receives reimbursement for reasonable travel expenses.
- A state agency employee or a consultant designated in a state agency’s conflict of interest code who acts within the scope of his or her duties or contract. However, such individuals are subject to the \$10 per month gift limit. (See Chapter 4.)
- An individual representing a bona fide church or religious society solely for the purpose of protecting the public’s right to practice the doctrines of that church.
- An individual representing a newspaper or other periodical of general circulation, book publisher, or radio or television station that, in the ordinary course of business, publishes or airs items urging legislative or administrative action. This exception does not apply when the newspaper, book publisher, or station engages in any additional activities in connection with influencing legislative or administrative action.
- An individual who only lobbies federal, county, multi-county (e.g., BART), local special districts, or city government agencies.
- An individual who only engages in activities to secure a grant, contract, or

permit from a state administrative agency and does not otherwise attempt to influence legislative or administrative action.

**Example** *MBI Corporation hired Norman Nickels for the sole purpose of securing a contract with the Department of General Services to provide computer services. Norman is not subject to either the compensation or time tests because such activity is not considered “influencing legislative or administrative action.”*

- An individual who engages only in administrative testimony.

**Examples** *Attorney Sally Hooperfield receives \$2,500 for appearing before the State Clean Air Advisory Board and providing expert testimony that becomes a part of the agency’s record. The meeting is transcribed and is conducted as an open public hearing for which public notice is given. Sally is not a lobbyist if her activities are limited to administrative testimony.*

*Preston Kamen is the general counsel for the Dorsey Corporation. During the month of February, he spends one-third of his compensated time providing administrative testimony at 10 state agency public hearings, he also spends one-fourth of his time meeting with legislators. Since Preston’s administrative testimony does not count toward the compensated “time” test, he does not qualify as a lobbyist.*

- An elected public official acting in an official capacity.

**Example** *Mayor Betty Rock communicates with legislators requesting their support of a bill affecting her city. Mayor Rock is not a lobbyist because she is acting within her official capacity as Mayor.*

### Questions and Answers

- Q. *Is compensation for travel time and preparation work for the purpose of influencing legislative or administrative action counted for purposes of determining whether an individual qualifies as a lobbyist?*
- A. Only the compensation (e.g., salary) an individual receives while engaging in **direct communication** is counted to determine if an individual qualifies as a lobbyist. Payments for travel and preparation time, and for actual travel expenses (e.g., airline tickets), do not count.
- Q. *Once an individual qualifies as a lobbyist, are travel expenses incurred for the purpose of influencing legislative or administrative action reportable?*
- A. Yes, these and other expenses are reportable once an individual has qualified as a lobbyist. (See Chapter 5.)

### Lobbying Firms (including individual contract lobbyists)

A lobbying firm is:

**an individual** (other than an in-house lobbyist) **or a business entity that is compensated** (other than reimbursement for reasonable travel expenses) **for directly communicating with a qualifying official** (other than administrative testimony) **when trying to influence legislative or administrative action** (such as bills and regulations).

An **individual** may qualify as a lobbying firm in two ways:

- The individual is a lobbyist compensated for lobbying on behalf of someone other than the individual’s employer (such as independent contractors); **or**



- The individual is a lobbyist compensated for lobbying on behalf of the individual's employer AND someone else.

**Examples** Robert Rogers is an in-house lobbyist for the Association of International Tin Roofers. During the third quarter of the calendar year, the Dome Corporation pays Robert to lobby a bill on its behalf. Robert, though still an employee of the Association of International Tin Roofers, must register as an individual contract lobbyist (lobbying firm) by filing Form 601 and an amended Form 604 and disclose on his Form 625 quarterly reports the payments received from the Dome Corporation and his compensation for lobbying services provided on behalf of his employer, the Association of International Tin Roofers. The Association must file an Amendment, Form 605, deleting him as an in-house lobbyist, and complete an Authorization Form, Form 602.

Megan Moen was a lobbyist for Communications, Inc., a lobbying firm. She left to work as a lobbyist for another lobbying firm, Capital Services. Communications, Inc. wants to retain Megan directly (not Capital Services) to lobby on behalf of one of its clients. In order to lobby for clients of both Capital Services and Communications, Inc., Megan must register as a separate lobbying firm. Her lobbying firm would indicate that it is a subcontractor to Communications, Inc., and Capital Services.

A **business entity** will qualify as a lobbying firm when:

- It receives or is entitled to receive compensation for lobbying AND at least one employee, partner, owner, or officer is a lobbyist; **or**
- It receives at least \$5,000 in a calendar quarter for lobbying AND at least one employee, partner, owner, or officer directly communicates on behalf of a client (even if no one in the firm is a lobbyist).

## Questions and Answers

- Q. Will an entity qualify as a lobbying firm if, in a calendar quarter, the entity receives \$4,500 from a client for testifying before a hearing of the State Legislature and \$600 for travel expenses?
- A. No. Because payments for reasonable travel expenses do not count toward qualification as a lobbying firm, the firm has not met the qualifying threshold of \$5,000.

## Lobbyist Employers

A lobbyist employer is any individual, business entity, association, local government agency, or other organization, other than a lobbying firm, that:

- directly employs an in-house lobbyist to influence or attempt to influence legislative or administrative action; or
- retains a lobbying firm to engage in direct communication for the purpose of influencing or attempting to influence legislative or administrative action.

**Examples** Wayne Butterfield's principal duties include direct communication to influence legislative or administrative action on behalf of his employer, the Association of Preservationists. Because Wayne spends one-third or more of his time lobbying in a calendar month, he qualifies as a lobbyist. The Association must register as a lobbyist employer and must also submit Wayne's lobbyist certification statement. Both Wayne and the Association of Preservationists will prepare quarterly lobbying disclosure reports.

The lobbying firm of High & Lowe is retained by the Camptown Corporation to prepare and present administrative testimony on Camptown's behalf. Camptown does not employ an in-house lobbyist. However, by

*retaining a lobbying firm, Camptown qualifies as a lobbyist employer. Prior to engaging in any lobbying activity, High & Lowe must add Camptown to its registration statement. Camptown must complete an authorization statement and file quarterly lobbying reports.*

*Lansdown International contracts with Pickett & Winnit, a public relations firm. On Lansdown's behalf, Pickett & Winnit hires the lobbying firm of Capital Crusaders to lobby a tax-related bill. Pickett & Winnit makes payments to Capital Crusaders for its lobbying services and is later reimbursed by Lansdown. As a lobbyist employer, Lansdown International must provide Capital Crusaders with an authorization statement and file quarterly lobbying reports. Both Lansdown and Capital Crusaders must disclose that payments were made and received through Pickett & Winnit on the quarterly disclosure statements. Pickett & Winnit is not required to register or report the payments because Pickett & Winnit does not lobby but instead has hired Capital Crusaders to lobby on behalf of Lansdown International.*

### Who is Not a Lobbyist Employer?

- A person that only makes payments to a lobbying coalition is not required to file lobbyist employer reports. However, such a person is required to file reports as a "\$5,000 Filer" if payments totaling \$5,000 or more are made to a lobbying coalition during a calendar quarter. Refer to page 1-7 for guidance.
- A person that hires an entity (which is not a lobbying firm) for the sole purpose of providing administrative testimony.

**Example** *The Recycle Now Corporation makes a payment to a law firm, that is not a lobbying firm, to prepare and present testimony for a public hearing of the California Integrated Waste Management Board. Except for the*

*testimony that becomes part of the public record at the hearing, the firm does not communicate with officials. Because the payment to the law firm is only for administrative testimony, Recycle Now does not qualify as a lobbyist employer.*

- A person that hires a lobbying firm for the sole purpose of monitoring and/or drafting legislation.

### Questions and Answers

Q. *Will a member of a bona fide association become a lobbyist employer by making regular dues payments to the association, some portion of which is used for lobbying activity?*

A. No. A member of an association will not qualify as a lobbyist employer by making regular dues or similar payments for membership in a bona fide association, even if a portion of the dues or similar payments is used by the association to employ a lobbyist or make other payments to influence legislative or administrative action.

However, if a member of an association makes a payment earmarked for lobbying purposes, the member may qualify as a lobbyist employer or \$5,000 filer.

Q. *Fifteen companies, all in the gravel business, decide to become a lobbying coalition and hire a lobbying firm to lobby the Legislature on bills affecting their industry. Each company provides Earthmovers, Inc., one of the companies, \$1,200 per month to pay the lobbying firm. Is Earthmovers, Inc., a lobbyist employer?*

A. No. If Earthmovers, Inc., is acting only as the administrative agent for the lobbying coalition, it will not become a lobbyist employer. Since no one company is paying \$5,000 or more in a calendar quarter for lobbying services, none of the

companies will qualify as a “\$5,000 Filer.” The lobbying coalition must register and file reports as discussed below.

## Lobbying Coalitions

A lobbying coalition is a group of **10** or more persons or entities formed primarily to influence legislative or administrative action whose members make payments to the coalition for the purpose of sharing the expenses of employing a lobbyist or contracting for the services of a lobbying firm.

**Example** *Fifteen manufacturers pool their funds and contract with the Best Lobbying Firm to lobby a piece of legislation. The group qualifies as a lobbying coalition and must complete the authorization statement, Form 602, and file quarterly lobbying reports disclosing payments to the lobbying firm as well as payments received from the coalition members.*

## Who is Not a Lobbying Coalition?

- A bona fide federation, confederation, trade association, or labor or membership organization that is ongoing in nature and whose membership services are not limited to influencing legislative or administrative action. Such an organization will qualify as a lobbyist employer if it employs an in-house lobbyist or makes payments to a lobbying firm.
- A group consisting of fewer than 10 persons or entities formed primarily to influence legislative or administrative action whose members make payments for the purpose of sharing the expenses of employing a lobbyist or contracting for the services of a lobbying firm. However, each of the persons or entities will qualify as a lobbyist employer.

**Example** *Eight companies pool their funds to hire a lobbying firm for the purpose of influencing a legislative bill. The companies plan to have more entities pay toward the lobbying firm’s expenses. Until there are 10 companies making payments to the lobbying firm, the entities do not qualify as a lobbying coalition, but do qualify as lobbyist employers. Each of the eight companies must file the authorization statement, Form 602, and file quarterly lobbyist employer reports, Form 635.*

## Important Notes:

- Because lobbying coalitions and lobbyist employers have common reporting obligations, examples of lobbying coalition disclosure requirements are incorporated with the lobbyist employer sections of this manual.
- Lobbying coalitions must include Form 635-C with each quarterly filing. In addition, a coalition member must include Form 630 with each quarterly filing if the coalition member files reports as a lobbying firm, lobbyist employer, or \$5,000 filer.

## Persons Who Spend \$5,000 or More to Influence Legislative or Administrative Action “\$5,000 Filer”

Persons (including business entities, associations, and other organizations) who do not employ an in-house lobbyist or contract with a lobbying firm, but who directly or indirectly make payments of \$5,000 or more in any calendar quarter to influence or attempt to influence legislative or administrative action, have disclosure obligations. The following types of payments must be aggregated to determine if the \$5,000 threshold has been met:

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- Payments for or in connection with direct communication with state officials;
- Payments for or in connection with soliciting or urging other persons to enter into direct communication with state officials;
- Payments to an organization, other than regular dues payments, for the purpose of hiring a lobbyist;
- Payments to a lobbying coalition; and
- Payments that directly or indirectly benefit state officials or members of their immediate families (“activity expenses”), but only if other payments to influence are made during the same calendar quarter.


For purposes of determining whether an entity qualifies as a \$5,000 filer, compensation paid to an employee (other than a lobbyist or an employee that provides clerical, secretarial, manual, or statistical services) must be counted if 10% or more of his or her compensated time in a calendar month is spent in connection with the activities described above.

However, all payments for travel and expenses incurred in connection with these activities must be counted whether or not the employee spends 10% of his or her time on lobbying activities.

\$5,000 filers are required to:

- File a Report of Person Spending \$5,000 or More to Influence Legislative or Administrative Action, Form 645, for each calendar quarter in which \$5,000 has been spent to influence legislative or administrative action.

 **QuickTip** \$5,000 filers are not required to register or terminate.

 **Examples** *In February, the Valencia Corporation sends an employee to Sacramento to testify before a state agency regarding a proposed regulation.*

*The employee spends more than 10% of his or her time during the month preparing and presenting the testimony. The amount of the employee's salary and the travel expenses attributable to the trip exceed \$5,000. The corporation qualifies as a \$5,000 filer and must file a report for the first quarter, January 1 - March 31.*

*In April, the Association of Valley Growers pays for newspaper advertisements urging readers to communicate with the Governor on a piece of legislation. The total cost of the advertisements exceeds \$5,000 during the second calendar quarter. The Association qualifies as a \$5,000 filer and must file a report for the second quarter, April 1 - June 30.*

*In October, the Association of Valley Growers pays a telephone solicitor \$10,000 to call voters regarding a piece of legislation. The solicitor may connect the voter to a legislator's office so that the voter can speak directly to the legislator's staff regarding the legislation. The Association qualifies as a \$5,000 filer and must file a report for the fourth quarter, October 1 – December 31.*

*The Association of Preservationists is a lobbyist employer and its in-house lobbyist is paid from the general membership dues fund. However, in one quarter, the Association solicits a \$6,000 special assessment to pay lobbying expenses. Association members who pay the assessment and are **not** already lobbyist employers will each qualify as a \$5,000 filer.*

### Who is Not a \$5,000 Filer?

- A person or entity that employs an in-house lobbyist or contracts with a lobbying firm.
- A person or entity that does not spend \$5,000 or more in a calendar quarter to influence legislative or administrative action.
- A person or entity whose only payments are gifts to state officials.



## **Statutory and Regulatory References**

### **Statutes**

82002	<i>Administrative Action</i>
82032	<i>Influencing Legislative or Administrative Action</i>
82037	<i>Legislative Action</i>
82038.5	<i>Lobbying Firm</i>
82039	<i>Lobbyist</i>
82039.5	<i>Lobbyist Employer</i>
82045	<i>Payment to Influence Legislative or Administrative</i>
82047	<i>Person</i>
86115	<i>Periodic Reports; Employers and Others</i>
86300	<i>Exemptions</i>

### **Regulations**

18202	<i>Quasi-Legislative Administrative Action</i>
18238.5	<i>Definition of Lobbying Firm; Individual Contract Lobbyist</i>
18239	<i>Definition of Lobbyist</i>
18239.5	<i>Definition of Lobbyist Employer</i>
18249	<i>State Agency</i>
18614	<i>Payments for Lobbying Services</i>
18616.4	<i>Reports by Lobbying Coalitions Which are Lobbyist Employers; Reports by Members of Lobbying Coalitions</i>

### **Note:**

All statutory references are to the California Government Code. The Political Reform Act is found in Government Code sections 81000-91014. Commission regulations may be found in Title 2, sections 18109-18997 of the California Code of Regulations.